



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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May 25, 2017

By ECF

Hon. Joseph A. Dickson
United States Magistrate Judge
District of New Jersey
Martin Luther King, Jr. Federal Building
and Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: SEC v. Gentile; 16 Civ. 1619 (JLL)(JAD)

Dear Judge Dickson:

We represent the Plaintiff, Securities and Exchange Commission, in the above-captioned action. We write to respond to Defendant Gentile's letter of today, May 25, 2017.

The Ongoing Investigation and Gentile's Long-Standing Awareness of It

As we disclosed to the Court in our letter of April 26, 2017 (DE 18, at 6 n.8), another regional office of the Commission is conducting a separate investigation into matters including possible violations arising out of Gentile's operation of his Bahamian broker-dealer. Gentile has long been aware of it -- since at least August 2015, and his counsel in this case has had multiple contacts with the staff assigned to that investigation. Gentile even acknowledged his understanding that the Commission would be pursuing it in the Stipulation he signed first staying this matter. (DE 8, at ¶ 2 ("This stay shall not alter the substantive or other procedural rights of the parties, including the Commission's right to continue to investigate other matters, by means of administrative subpoenas or otherwise. All such rights are expressly reserved."))¹

The Commission Has Undertaken to Make All Relevant Materials Obtained in Its Investigation Available to Gentile Once the Stay He Demanded Is Lifted

As we also noted in our April 26, 2017 letter to the Court, any materials obtained in the Commission's separate investigation that "are relevant to the allegations in the instant Complaint"

¹ Despite Gentile's claim to the contrary (DE 26, at 2), both he and the Commission understood the Stay stipulation and Order to be lifted once the criminal charges were dismissed. See DE 12 (Gentile's Letter, dated March 9, 2016, at 1 ("Read together, we understood that the Order of dismissal ended the stay in the present matter, resulting in a March 31, 2017 deadline for Mr. Gentile to move, answer or otherwise respond to the Commission's Complaint."))

Hon. Joseph A. Dickson

May 25, 2017

Page 2

will be made available to Gentile “if and when discovery is allowed.” (DE 8, at 6 n.8.) That those materials may be relevant to issues of relief in this case -- including, but not limited to, Gentile’s propensity for future misconduct – is entirely possible, given that Gentile’s conduct is the focus of this litigation and a focus of the separate investigation. But the investigation, as already explained, arises out of Gentile’s operation of his Bahamian brokerage, not his manipulation of the stocks of two companies that began in 2007 and 2008, the conduct at issue in this case.

The conduct that is the subject of the Commission’s separate investigation is just that: separate. If the Commission were required to stop investigating different conduct perpetrated by defendants it sues, then such defendants would have a free pass to violate the law pending the litigation of the Commission’s claims, a result that is inconsistent with the public interest and the mission of the Commission.²

If the Court deems it appropriate, we will be available for a conference to discuss these matters further or to set a briefing schedule on any motion Gentile might be permitted to make, notwithstanding the imposition of the Stay he sought.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy A. Brown", with a stylized flourish at the end.

Nancy A. Brown

cc: Hon. Jose L. Linares (via regular mail)
Adam Ford, Esq. (via email)

² The Commission properly disclosed the persons and documents that it “may use to support its claims,” as required by Rule 26(a) in its Initial Disclosures. Having put Gentile on notice of the existence of other investigations, we stand ready to work cooperatively with Gentile to provide him with all relevant discovery called for in the document requests we anticipate he will serve once the Stay he demanded is lifted. Until such time, and like every other person investigated by the Commission, Gentile is not entitled to materials gathered pursuant to a non-public investigation.